

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1214

Citations Affected: IC 6-2.5-7; IC 6-6; IC 6-8.1; IC 8-2.1; IC 9-20-18-14.5.

Synopsis: Motor carrier enforcement. Conference committee report for EHB 1214. Provides that the prepayment rate used in determining prepayment amounts of sales tax on certain wholesale sales of gasoline may not exceed 125% of the prepayment rate in effect on the day before the prepayment rate is redetermined by the department of state revenue. Requires certain reports and returns filed with the department of state revenue (department) concerning gasoline tax and special fuel tax to be filed in an electronic format. Requires a motor carrier to file a claim for a proportional use credit for a calendar quarter on or before the due date of the motor carrier's quarterly motor fuel tax return. Allows the department to deny the issuance of or to suspend or revoke certain registrations, permits, or certificates of authority if the owner or operator of a commercial motor vehicle does not file all tax returns or reports or pay all taxes, penalties, and interest for a listed tax. Provides civil penalties for a motor carrier operating without required credentials or operating with altered credentials. Specifies conditions under which the department or the state police department may impound a motor vehicle of a motor carrier that is not authorized to transport passengers for hire. Increases the application fees paid to the department's motor carrier services division. Specifies that certain registration requirements do not apply to a person exclusively engaged in the private transportation of nonhazardous property. Provides that the department may not register or title a motor carrier if the motor carrier fails to comply with certain federal regulations or the motor carrier's authority to operate has been terminated or denied by a federal agency. Specifies certain penalties for motor carriers that violate the permitting provisions for oversize and overweight vehicles. **(This conference committee report: (1) deletes language providing that certain indemnity provisions contained in, collateral to, or affecting a motor carrier transportation contract are against public policy and are void and unenforceable; and (2) adds language: providing that the prepayment rate used in determining prepayment amounts of sales tax on certain wholesale sales of gasoline may not exceed 125% of the prepayment rate in effect on the day before the prepayment rate is redetermined by the department of state revenue; requiring certain reports and returns filed with the department of state revenue (department) concerning gasoline tax and special fuel tax to be filed in an electronic format; requiring a motor carrier to file a claim for a proportional use credit for a calendar quarter on or before the due date of the motor**

carrier's quarterly motor fuel tax return; allowing the department to deny the issuance of or to suspend or revoke certain registrations, permits, or certificates of authority if the owner or operator of a commercial motor vehicle does not file all tax returns or reports or pay all taxes, penalties, and interest for a listed tax; providing civil penalties for a motor carrier operating without required credentials or operating with altered credentials; specifying conditions under which the department or the state police department may impound a motor vehicle of a motor carrier that is not authorized to transport passengers for hire; increasing the application fees paid to the department's motor carrier services division; specifying that certain registration requirements do not apply to a person exclusively engaged in the private transportation of nonhazardous property; providing that the department may not register or title a motor carrier if the motor carrier fails to comply with certain federal regulations or the motor carrier's authority to operate has been terminated or denied by a federal agency; and specifying certain penalties for motor carriers that violate the permitting provisions for oversize and overweight vehicles.)

Effective: July 1, 2006.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1214 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-2.5-7-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~For purposes of (a)~~
- 4 **The definitions in this section apply throughout** this chapter.
- 5 (b) "Kerosene" has the same meaning as the definition contained in
- 6 IC 16-44-2-2.
- 7 (c) "Gasoline" has the same meaning as the definition contained in
- 8 IC 6-6-1.1-103.
- 9 (d) "Special fuel" has the same meaning as the definition contained
- 10 in IC 6-6-2.5-22.
- 11 (e) "Unit" means the unit of measure, such as a gallon or a liter, by
- 12 which gasoline or special fuel is sold.
- 13 (f) "Metered pump" means a stationary pump which is capable of
- 14 metering the amount of gasoline or special fuel dispensed from it and
- 15 which is capable of simultaneously calculating and displaying the price
- 16 of the gasoline or special fuel dispensed.
- 17 (g) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.
- 18 (h) "Indiana special fuel tax" means the tax imposed under
- 19 IC 6-6-2.5.
- 20 (i) "Federal gasoline tax" means the excise tax imposed under Section
- 21 4081 of the Internal Revenue Code.

(j) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(k) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(i) (1) the total price per unit; minus

(ii) (2) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

(l) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(m) "Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(n) "Prepayment rate" means a rate per gallon of gasoline ~~rounded to the nearest one-tenth of one cent (\$0.001);~~ determined by the department ~~by determining the product of:~~

~~(1) the statewide average retail price per gallon of gasoline excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by~~

~~(2) the state gross retail tax rate; multiplied by~~

~~(3) ninety percent (90%);~~

under section 14 of this chapter for use in calculating prepayment amounts of gross retail tax under section 9 of this chapter.

(o) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(p) "Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds an unrevoked permit issued under section 7 of this chapter.

(q) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(r) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 2. IC 6-2.5-7-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. (a) Before June 10

and December 10 of each year, the department shall determine and provide to:

(1) each refiner and terminal operator and each qualified distributor known to the department to be required to collect prepayments of the state gross retail tax under this chapter; and

(2) any other person that makes a request;

a notice of the prepayment rate to be used during the following six (6) month period. The department shall also have the prepayment rate published in the June and December issues of the Indiana Register.

(b) In determining the prepayment rate under this section, the department shall use the most recent retail price of gasoline available to the department.

(c) The prepayment rate per gallon of gasoline determined by the department under this section is the amount per gallon of gasoline determined under STEP FOUR of the following formula:

STEP ONE: Determine the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax.

STEP TWO: Determine the product of the following:

(A) The STEP ONE amount.

(B) The Indiana gross retail tax rate.

(C) Ninety percent (90%).

STEP THREE: Determine the lesser of:

(A) the STEP TWO result; or

(B) the product of:

(i) the prepayment rate in effect on the day immediately preceding the day on which the prepayment rate is redetermined under this section; multiplied by

(ii) one hundred twenty-five percent (125%).

STEP FOUR: Round the STEP THREE result to the nearest one-tenth of one cent (\$0.001).

SECTION 3. IC 6-6-1.1-515 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 515. The administrator may require that all reports required to be filed under section 209, 501, 502, 504, or 606 of this chapter must be filed in an electronic format prescribed by the administrator.**

SECTION 4. IC 6-6-2.5-72 IS ADDED TO THE CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 72. The administrator may require that all reports required to be filed under section 56.5, 57, or 60 of this chapter must be filed in an electronic format prescribed by the administrator.**

SECTION 5. IC 6-6-4.1-4.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.8. (a) This section applies only to a claim for a proportional use credit under section 4(d) or 4.5(d) of this chapter for taxes first due and payable after July 31, 1999.**

(b) In order to obtain a proportional use credit against taxes imposed under section 4 or 4.5 of this chapter, a carrier must file a claim with the

department. The claim must be submitted on a form prescribed by the department and must be filed with the quarterly return for the taxable period for which the proportional use credit is claimed. A carrier is not entitled to a proportional use credit under section 4(d) or 4.5(d) of this chapter unless the carrier:

- (1) has paid in full the taxes to which the credit applies; **and**
- (2) has filed a claim for the credit on or before the due date of the corresponding quarterly return for the taxable period for which the proportional use credit is claimed.**

A credit approved under this section shall, subject to this section, be refunded to the carrier without interest.

(c) The department shall determine the aggregate amount of proportional use credits claimed under section 4(d) or 4.5(d) of this chapter for each quarter. The department may approve the full amount of a proportional use credit claimed by a carrier if the aggregate amount of proportional use credits claimed for the quarter and for the fiscal year do not exceed the limits set forth in subsection (d). If the aggregate amount of proportional use credits claimed in a quarter exceeds the limits set forth in subsection (d), the department shall pay the claims for that quarter on a pro rata basis.

(d) The department may not approve more than three million five hundred thousand dollars (\$3,500,000) of proportional use credits under this section in a state fiscal year. In addition, the amount of proportional use credits the department may approve under this section for a quarter may not exceed the following:

(1) For the quarter ending September 30 of a year, an amount equal to one million three hundred seventy-five thousand dollars (\$1,375,000).

(2) For the quarter ending December 31 of a year, an amount equal to:

(A) six hundred twenty-five thousand dollars (\$625,000); plus

(B) the greater of zero (0) or the result of:

(i) the limit determined for the previous quarter under this subsection; minus

(ii) the aggregate amount of claims approved for the previous quarter.

(3) For the quarter ending March 31 of a year, an amount equal to:

(A) six hundred twenty-five thousand dollars (\$625,000); plus

(B) the greater of zero (0) or the result of:

(i) the limit determined for the previous quarter under this subsection; minus

(ii) the aggregate amount of claims approved for the previous quarter.

(4) For the quarter ending June 30 of a year, an amount equal to:

(A) eight hundred seventy-five thousand dollars (\$875,000); plus

(B) the greater of zero (0) or the result of:

(i) the limit determined for the previous quarter under this subsection; minus

(ii) the aggregate amount of claims approved for the previous

1 quarter.

2 SECTION 6. IC 6-8.1-4-4 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The department
4 shall establish a registration center to service owners of commercial
5 motor vehicles.

6 (b) The registration center is under the supervision of the department
7 through the motor carrier services division.

8 (c) An owner or operator of a commercial motor vehicle may apply to
9 the registration center for the following:

- 10 (1) Vehicle registration (IC 9-18).
- 11 (2) Motor carrier fuel tax annual permit.
- 12 (3) Proportional use credit certificate (IC 6-6-4.1-4.7).
- 13 (4) Certificate of operating authority.
- 14 (5) Oversize vehicle permit (IC 9-20-3).
- 15 (6) Overweight vehicle permit (IC 9-20-4).
- 16 (7) Payment of the commercial vehicle excise tax imposed under
17 IC 6-6-5.5.

18 **(d) The commissioner may deny an application described in**
19 **subsection (c) if the applicant fails to do any of the following with**
20 **respect to a listed tax:**

- 21 **(1) File all tax returns or information reports.**
- 22 **(2) Pay all taxes, penalties, and interest.**

23 **(e) The commissioner may suspend or revoke any registration,**
24 **permit, certificate, or authority if the person to whom the**
25 **registration, permit, certificate, or authority is issued fails to do**
26 **any of the following with respect to a listed tax:**

- 27 **(1) File all tax returns or information reports.**
- 28 **(2) Pay all taxes, penalties, and interest.**

29 ~~(d)~~ **(f)** Funding for the development and operation of the registration
30 center shall be taken from the motor carrier regulation fund (IC
31 8-2.1-23-1).

32 ~~(e)~~ **(g)** The department shall recommend to the general assembly other
33 functions that the registration center may perform.

34 SECTION 7. IC 6-8.1-10-13 IS ADDED TO THE INDIANA CODE
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2006]: Sec. 13. **(a) A person that:**

- 37 **(1) obtains a permit, license plate, cab card, or any other**
38 **credential issued by the registration center established under**
39 **IC 6-8.1-4-4; and**
- 40 **(2) alters the permit, license plate, cab card, or other**
41 **credential;**

42 **is subject to a civil penalty of five hundred dollars (\$500) for the**
43 **first violation and one thousand dollars (\$1,000) for each**
44 **subsequent violation.**

45 **(b) A person that:**

- 46 **(1) is required to obtain a permit, a license plate, a cab card, or**
47 **other credential issued by the registration center established**
48 **under IC 6-8.1-4-4; and**
- 49 **(2) operates without obtaining the required permit, license**

plate, cab card, or other credential;
is subject to a civil penalty of five thousand dollars (\$5,000) for each violation.

(c) A civil penalty imposed under this section:

(1) shall be deposited in the motor carrier regulation fund established by IC 8-2.1-23-1; and

(2) is in addition to any fines levied by a court.

SECTION 8. IC 8-2.1-22-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 29. (a) A person may not operate any motor vehicle over the public highways for hire, unless the operations are specifically exempt under this chapter, without first having obtained appropriate operating authority from the department to do so, and having otherwise complied with all other applicable provisions of this chapter.

(b) The department or the state police department may apply to an administrative law judge of the department or a court with jurisdiction for an order to impound a motor vehicle that is offered by a motor carrier to the general public for the transportation of passengers for hire if:

(1) the motor carrier has not obtained the required authority from the department to operate the motor vehicle for hire; and

(2) there is probable cause to believe that the motor vehicle has been operated on an Indiana highway to transport passengers for hire.

A hearing on an application to impound a motor vehicle under this subsection may not be held sooner than three (3) days after the date on which a notice of hearing on the application is served on the motor carrier. The motor carrier may contest the application to impound the motor vehicle at the hearing.

(c) A motor carrier that operated a motor vehicle impounded under this section may not obtain possession of the impounded motor vehicle unless the motor carrier obtains the required authority to operate the motor vehicle for hire.

SECTION 9. IC 8-2.1-22-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 40. (a) All applications under this chapter for a common carrier certificate or a contract carrier permit to operate motor vehicles, intrastate or interstate, shall be made on forms prescribed by the department.

(b) All applications for a common carrier certificate of public convenience and necessity, or a contract carrier permit, to operate motor vehicles intrastate on the public highways, which applications require a public hearing thereon, shall be accompanied by a filing fee of ~~fifty one hundred~~ dollars ~~(\$50): (\$100)~~. Each petition for reinstatement of a common carrier certificate of public convenience and necessity, or a contract carrier permit, to operate motor vehicles intrastate, on the highways of this state, shall be accompanied by a filing fee of fifty dollars (\$50).

(c) All applications for a temporary certificate of public convenience and necessity, or for a contract carrier permit to operate motor vehicles

on the highways of this state in intrastate commerce, shall be accompanied by a filing fee of ~~fifty one hundred~~ dollars ~~(\$50): (\$100)~~.

(d) All applications for a change in the name of the holder of a common carrier certificate of public convenience and necessity, of a common carrier certificate of authority or certificate of registration, or of a contract carrier permit, which change of name does not involve a change in the ownership of the operating rights of the certificate or permit holder, shall be made by verified petition to the department, and the applications shall be accompanied by a filing fee of twenty-five dollars (\$25).

(e) In addition to the filing fees prescribed in subsection (b), all applications for a common carrier certificate of public convenience and necessity, or for a contract carrier permit, to operate motor vehicles intrastate, on the public highways, which applications require a public hearing thereon, shall be accompanied by a publication fee of ~~twenty~~ **eighty** dollars ~~(\$20): (\$80)~~. Whenever any republication is required through no fault of the department, the party responsible therefor shall be required to pay an additional publication fee of ~~twenty~~ **eighty** dollars ~~(\$20): (\$80)~~ for each republication.

(f) Each petition for rehearing of an application for a common carrier certificate of public convenience and necessity, or for a contract carrier permit, to operate motor vehicles intrastate, on the public highways, shall be accompanied by a filing fee of twenty-five dollars (\$25).

(g) Each application or petition for alteration or change of a common carrier certificate of public convenience and necessity, or a contract carrier permit, to operate motor vehicles intrastate, on the public highways, shall be accompanied by a filing fee of fifty dollars (\$50).

(h) Each application requesting permission to deviate from the department's tariff publishing regulations shall be accompanied by a filing fee of fifteen dollars (\$15).

SECTION 10. IC 8-2.1-24-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. Before a motor carrier engaged in the transportation of property for compensation may operate a motor vehicle upon a public highway providing intrastate transportation, the motor carrier must be properly registered as required under the single state registration system in accordance with rules adopted by the department under IC 4-22-2. This section does not apply to a person exclusively engaged in the private transportation of **nonhazardous** property.

SECTION 11. IC 8-2.1-24-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 28. **(a)** Pursuant to an operations out of service order issued by the United States Department of Transportation or the Federal Highway Administration affecting a motor carrier operating in Indiana, the department of state revenue or the state police department may revoke and confiscate any registrations, license plates, or cab cards issued under IC 9-18.

(b) The department of state revenue may not register or title a motor carrier:

(1) if the motor carrier fails to comply with federal regulations

1 **under 49 CFR 386;**

2 **(2) under an operations out of service order issued by a federal**
 3 **agency; or**

4 **(3) if the motor carrier's ability to operate has been terminated**
 5 **or denied by a federal agency.**

6 SECTION 12. IC 9-20-18-14.5 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.5. (a) The civil
 8 penalties imposed under this section are in addition to the other civil
 9 penalties that may be imposed under IC 8 and IC 9. **Notwithstanding**
 10 **section 12 of this chapter, a civil penalty imposed under this**
 11 **section:**

12 **(1) shall be deposited in the motor carrier regulation fund**
 13 **established by IC 8-2.1-23-1; and**

14 **(2) is in addition to any fines imposed by a court.**

15 (b) A person who violates IC 9-20-5-7 is subject to a civil penalty of
 16 five hundred dollars (\$500) for each violation. ~~as determined by the~~
 17 ~~court. Notwithstanding section 12 of this chapter, a civil penalty~~
 18 ~~imposed under this section must be deposited in the motor carrier~~
 19 ~~regulation fund established under IC 8-2.1-23.~~

20 (c) A person who operates a vehicle subject to IC 9-20-5-7 on a route
 21 other than a route designated under IC 9-20-5-4 is subject to a civil
 22 penalty of five hundred dollars (\$500) for each violation as determined
 23 by the court. ~~Notwithstanding section 12 of this chapter, a civil penalty~~
 24 ~~imposed under this section must be deposited in the motor carrier~~
 25 ~~regulation fund established under IC 8-2.1-23.~~

26 (c) A person who obtains a permit under this article and violates
 27 this article is subject to a civil penalty of five hundred dollars
 28 (\$500) for the first violation and one thousand dollars (\$1,000) for
 29 each subsequent violation.

30 (d) A person who transports heavy vehicles or loads subject to
 31 this article and fails to obtain a permit required under this article
 32 is subject to a civil penalty of five thousand dollars (\$5,000) for
 33 each violation.

34 (e) A civil penalty imposed under this section may be assessed
 35 against a person only after an administrative hearing has been
 36 conducted at which the person has an opportunity to present
 37 information as to why the civil penalty should not be assessed.

(Reference is to EHB 1214 as reprinted March 2, 2006.)

Conference Committee Report
on
Engrossed House Bill 1214

Signed by:

Representative Davis
Chairperson

Senator Long

Representative Pelath

Senator Lanane

House Conferees

Senate Conferees